

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**
455 Golden Gate Avenue
San Francisco, California 94102-3660

Report Summary

TO: Members of the Judicial Council

FROM: Family and Juvenile Law Advisory Committee
Hon. Michael Nash
Jennifer Walter, Supervising Attorney 415-865-7687

DATE: March 29, 2000

SUBJECT: Petition for Modification: Conduct of Hearing (amend Cal. Rules of Court, rule 1432(f))

Issue Statement

Rule 1432(f) of the California Rules of Court addresses the conduct of a modification hearing in juvenile dependency court. The rule currently provides that the court has discretion to decide section 388 petitions based on declaration and documentary evidence or by testimony unless the request is for removal of the child from the home of a parent or guardian or removal is to a more restrictive level of placement. The proposed amendment would add an additional exception limiting the court's discretion where there is a due process right to confront and cross-examine witnesses.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective July 1, 2000, amend rule 1432(f) of the California Rules of Court to add an exception limiting the court's discretion to decide petitions under Welfare and Institutions Code section 388 based on documentary evidence.

This amendment would conform to the holding of *Matthew P.* and require a juvenile court to hold a contested hearing when there are due process considerations.

Rationale for Recommendation

The proposed rule amendment was prompted by a letter from an attorney citing the recent appellate opinion, *In re Matthew P.* (1999) 71 Cal.App.4th 841. *Matthew P.* held that rule 1432(f) does not “override due process considerations.” The case involved de facto parents who filed a section 388 petition to have the children returned to their care. The modification was opposed by the social service agency that submitted reports to substantiate their position. The de facto parents requested the opportunity to cross-examine the preparer of the report but the court relied on rule 1432(f) to eliminate testimony. *Matthew P.* held that this was a violation of the de facto parents’ procedural due process rights and that rule 1432(f) does not trump due process.

Alternative Actions Considered

Not applicable.

Comments From Interested Parties

The invitation to comment on the proposal was circulated with the relevant excerpt of *In re Matthew P.* (1999) 71 Cal.App.4th 841. It was circulated to presiding justices and clerks of the Courts of Appeal, presiding judges of the juvenile courts, the clerk of the Supreme Court, trial court administrators and clerks, and other interested persons and organizations. It was circulated from December 23, 1999, through February 22, 2000.

We received a total of nine comments. All agreed with the proposed amendments. One commentator suggested a clarifying amendment and pointed out a typographical error. The proposal was amended to reflect the commentator’s suggested changes. Another commentator indicated that the reference to “due process” considerations in the rule might be unclear. If it is unclear, we believe the case from which the language was taken provides the necessary context for the rule.

The comments are summarized in the attached table at pages 4–5.

Implementation Requirements and Costs

There will be no additional actions that the staff or the courts will need to take, nor will there be any costs associated with implementing the recommendation.

The text of the amended rule is attached at page 3.

Comments for
Petition for modification: conduct of hearing
(Cal. Rules of Court, rule 1432(f))

	Commentator	Position	Comment on Behalf of Group	Comments	Committee Response
1.	Cathy Scoggin Title 4-D Courtroom Clerk Yolo County Superior Court	A			
2.	Phrasel L. Shelton Rules Committee Chair San Mateo County Superior Court	A			
3.	Jack Komar Presiding Judge Santa Clara County Superior Court	A		"We have some concern that it may be unclear as to the definition of 'due process considerations.'"	Language is consistent with <u>In re: Matthew P.</u> , 99 California Daily Opinion Service 3054.
4.	Tricia McCoy Juvenile Supervisor Kern County Superior Court				
5.	Leslye Kasoff Program Analyst Los Angeles County Superior Court		Y		
6.	Charlene Walker Div. Manager Sacramento County Superior Court	A	Y		
7.	Patty McCrea Court Services Supervisor Riverside County Superior Court	A	Y		

	Commentator	Position	Comment on Behalf of Group	Comments	Committee Response
8.	Joy Lazo Research Attorney San Diego County Juvenile Court	AM		<p>The following changes were suggested for the proposed new language of 1432(f):</p> <p><u>“if: (1) the request is for removal from the home of the parent or guardian or (2) there is a any party invokes his or her due process right to confront and cross-examine witnesses. Otherwise, proof may be by declaration and other documentary evidence, or by testimony, or both, at the discretion of the court.”</u></p> <p>Correct typo and insert clarifying language in italics.</p>	<p>Typo – agree</p> <p>Clarifying amendment – agree.</p>
9.	Alice Lopez Court Programs Manager Ventura County Superior Court	A			